S.B. CIVIL WRIT PETITION NO.4489/2002
(S.K. Ghosal vs. Union of India & Ors.)

Date :: 07.07.2006

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr.K.K. Shah, for the petitioner.
Mr.V.K. Mathur, for Union of India.

The petitioner filed this writ petition with the prayer that the respondents may be directed to give him pay and allowances of the rank of Group Captain since 05.08.1998 with interest @ 18% and be further directed to hold the promotion board for the next higher post before the date of his retirement from service on 30.11.2002.

Learned counsel for the petitioner at the out set informed the Court that the petitioner has since retired from service on 30.11.2002 and, therefore, he does not press the second part of the prayer for holding the promotion board. On the first part of the prayer, he however, submits that while respondent was substantially working as Lieutenant Colonel (MR 4825), he was approved for secondment to Air Force on promotion to the post of Group Captain with the change of uniform and by

order dated 12th June, 1998 (Annexure-1) he was posted at Air Force Station, Jodhpur as SMO (Group Captain). The respondents by the order dated 24th October, 2000 ordered to recover a sum of Rs.21423/- on the unfounded assumption that promotion of the petitioner to the rank of Group Captain, which in the Army is equivalent to Colonel, was not substantive and, therefore, he shall only get unpaid cadre of Group Captain.

Learned counsel invited my attention to the averments in the reply of the respondents at page 55/56, wherein they have admitted that the promotion of the petitioner was of a substantive nature and ultimately Staff Gazette Notification has been published and the case of the petitioner for payment of arrears of pay and allowance for substantive rank of Group Captain has been considered by giving authorization of payment of arrears on 27th January,2003.

The petitioner however has disputed this position in the rejoinder to the reply and placed on record the calculation sheet as Annexure-24. According to which, the petitioner is entitled to a total amount of arrears which comes to Rs.41,046/- but he has been paid only a sum of Rs.33,346/-. The petitioner has stated that the amount of

sum of Rs.77,00/- due to difference of arrears in the basic salary, has erroneously been not paid by the respondents. He has also argued that the petitioner was not paid arrears for almost four and half years, which actually accrued to him on 05th August, 1998 but the payment of which has been made in the month of February, 2003. He should be therefore granted interest for this delay of four and half years. The respondents have not been able to controvert this position submitted by the petitioner in the rejoinder, with which he has also filed the calculation sheet of the respondents themselves as Annexure-24.

In this view of the matter, the present writ petition is partly allowed. The respondents are directed to pay arrears in the sum of Rs.77,00/- and shall also pay the interest @ 6% per annum for the period of delay caused in making payment.

There shall be no order as to costs.

[MOHAMMAD. RAFIQ],J.

Ashwini/-